



Texas Department of Insurance

Division of Workers' Comp

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

VISTA MEDICAL CENTER HOSPITAL
4301 VISTA ROAD
PASADENA TX 77504-2117

Respondent Name

HOUSTON ISD

Carrier's Austin Representative Box

Box Number 21

MFDR Tracking Number

M4-04-6518-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Vista Medical Center Hospital charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services. The amount of reimbursement deemed to be fair and reasonable by Vista Medical Center Hospital is at a minimum of 70% of billed charges. This is supported by the Focus managed care contract. This managed care contract supports Vista Medical Center Hospital's argument that the usual and customary charges are fair and reasonable and **at the very minimum**, 70% of the usual and customary charges is fair and reasonable...the managed care contract shows numerous Insurance Carrier's willingness to provide 70% reimbursement for Ambulatory Surgical Centers medical services." "...amounts paid to healthcare providers by third party payers are relevant to determining fair and reasonable workers' compensation reimbursement. Further, TWCC stated specifically that managed care contracts are fulfill the requirements of Texas Labor Code Section 413.011 as they are 'relevant to what fair and reasonable reimbursement is,' they are relevant to achieving cost control,' they are relevant to ensuring access to quality care,' and they are 'highly reliable.' See 22 TexReg 6272. Finally, managed care contracts were determined by the TWCC to be the best indication of a market price voluntarily negotiated for medical services."

Amount in Dispute: \$45,606.37

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Respondent has paid a fair and reasonable amount for the services made the basis of this dispute. The Requestor argues that the Carrier failed to issue EOBs/TWCC 62s on this case. However, this argument is inaccurate, as the attached EOBs demonstrate. Should the Requestor be dissatisfied with the Respondent's payment, it is incumbent upon the Requestor to demonstrate the reasonableness of its fee. Unfortunately, the Requestor's documentation makes no such attempt." "Regardless of the amount of the Respondent's payment, the burden remains squarely upon the Provider to show that the billed amount is fair and reasonable. The Requestor in this matter has failed to meet its burden."

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 7, 2003	Outpatient Surgery	\$45,606.37	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.1, effective May 16, 2002, 27 *Texas Register* 4047, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission."
3. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
4. 28 Texas Administrative Code §133.304, effective July 15, 2000 sets out the procedure for medical payments and denials.
5. This request for medical fee dispute resolution was received by the Division on February 13, 2004. Pursuant to 28 Texas Administrative Code §133.307(g)(3), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, the Division notified the requestor on February 20, 2004 to send additional documentation relevant to the fee dispute as set forth in the rule.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
7. For the services involved in this dispute, the respondent reduced or denied payment with reason code(s):
Explanation of Benefits dated January 26, 2004
 - ZGP-The charge exceeds usual and customary (Z601).
 - ZLG (F)-This bill has been reviewed by a registered nurse (Z772).
 - X3G (N)-Payment for this charge is not recommended without medical records (X124).
 - Z14-Recommendation of payment has been based on this procedure code, , which best describes services rendered (Z652).
 - XFS-Intra-OP anesthesia record needed to verify OR and Anesthesia time billed (X568).
 - XON (N)-Payment for this charge is not recommended without documentation of cost (X023).
 - XFU-Pre-OP, Intra-OP, and holding room fees are not reimbursable and are included in the surgical procedure performed. Please revise billing accordingly (X570).
 - X2M (F)-Charges included in the facility fee (X094).
 - XMN (G)-This procedure is incidental to the primary procedure, and does not warrant separate reimbursement (X815).
 - X2J (N)-Payment for this charge is not recommended without an appropriate procedure code or description of service (X091).
 - X0B (U)-This charge is in excess of the maximum recommended amount/time for the services rendered (X011).
 - The "Amount Allowed" may reflect an adjustment due to repricing to applicable state fee schedules and/or exclusions of patient convenience items.
 - F-Reduction according to fee guidelines.

- M-Reduced to fair and reasonable.
- N-Not appropriately documented.
- U-Unnecessary treatment (W/O Peer Review).
- G-Include in global.

Findings

1. 28 Texas Administrative Code §133.304(c) states in part “At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission’s instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier’s action(s).”

The Division finds that the respondent issued payment of \$9,173.63 for “Med-Surg supplies,” but denied payment of \$72.00 and \$94.50 based upon “U” and “F”.

The Division reviewed the submitted EOB and finds that the respondent did not clearly specify which “Med-Surg supplies” were being denied based upon “U” and “F.” Furthermore, the itemized statement does not list any “Med-Surg supplies” billed for \$72.00 nor \$94.50. Therefore, the respondent did not clearly and sufficiently explain this denial per 28 Texas Administrative Code §133.304(c).

2. 28 Texas Administrative Code §133.307(g)(3)(B), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to send additional documentation relevant to the fee dispute including “a copy of any pertinent medical records.” Review of the submitted documentation finds that the requestor has not provided copies of all medical records pertinent to the services in dispute. Although the requestor did submit a copy of the operative report, the requestor did not submit a copy of the anesthesia record, post-operative care record, or other pertinent medical records sufficient to support the services in dispute. The Division concludes that the requestor has not met the requirements of §133.307(g)(3)(B).
3. 28 Texas Administrative Code §133.307(g)(3)(D), effective January 1, 2003, 27 *Texas Register* 12282, applicable to disputes filed on or after January 1, 2003, requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that:
 - The requestor’s position summary states that “Vista Medical Center Hospital charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services.”
 - The requestor did not provide documentation to demonstrate how it determined its usual and customary charges for the disputed services.
 - Documentation of the comparison of charges to other carriers was not presented for review.
 - Documentation of the amount of reimbursement received for these same or similar services was not presented for review.
 - The Division has previously found that “hospital charges are not a valid indicator of a hospital’s costs of providing services nor of what is being paid by other payors,” as stated in the adoption preamble to the Division’s former *Acute Care Inpatient Hospital Fee Guideline*, 22 TexReg 6276 (July 4, 1997). It further states that “Alternative methods of reimbursement were considered... and rejected because they use hospital charges as their basis and allow the hospitals to affect their reimbursement by inflating their charges...” 22 TexReg 6268-6269. Therefore, the use of a hospital’s “usual and customary” charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
 - In the alternative, the requestor asks to be reimbursed a minimum of 70% of billed charges, in support of which the requestor states that “The amount of reimbursement deemed to be fair and reasonable by Vista Medical Center Hospital is at a minimum of 70% of billed charges. This is supported by the Focus managed care contract. This managed care contract supports Vista Medical Center Hospital’s argument that the usual and customary charges are fair and reasonable and **at the very minimum**, 70% of the usual and customary charges is fair and reasonable...the managed care contract shows numerous Insurance Carrier’s willingness to provide 70% reimbursement for Ambulatory Surgical Centers medical services.”
 - The requestor has provided select exhibit pages from the alleged managed care contract referenced above; however, a copy of the contract referenced in the position statement was not presented for review with this dispute.

- The requestor submitted a letter of clarification dated July 30, 1992 indicating a change in reimbursement to the above referenced contract, stating in part that “services rendered to eligible Beneficiaries will be considered at 80% of the usual and reasonable charge which is equal to the lesser of the actual charges billed by HCP; OR the eightieth (80th) percentile for charges for such services as set forth in the current Medical Data Research Database.”
- The requestor also presented a separate schedule of charges (also labeled exhibit “A”). The relevant portions of this document were not legible. Division rule at 28 TAC §133.307(e)(2) requires that “Each copy of the request shall be legible.” The Division finds that the requestor has not met the requirements of 28 TAC §133.307(e)(2).
- No data or information was submitted from the Medical Data Research database to support the requested reimbursement.
- No documentation was presented by the requestor to support that the referenced contract was in effect at the time of the disputed services.
- The requestor’s position statement further asserts that “amounts paid to healthcare providers by third party payers are relevant to determining fair and reasonable workers’ compensation reimbursement. Further, TWCC stated specifically that managed care contracts are fulfill the requirements of Texas Labor Code Section 413.011 as they are ‘relevant to what fair and reasonable reimbursement is,’ they are relevant to achieving cost control,’ they are relevant to ensuring access to quality care,’ and they are ‘highly reliable.’ See 22 TexReg 6272. Finally, managed care contracts were determined by the TWCC to be the best indication of a market price voluntarily negotiated for medical services.”
- While managed care contracts are relevant to determining a fair and reasonable reimbursement, the Division has previously found that a reimbursement methodology based upon payment of a percentage of a hospital’s billed charges does not produce an acceptable payment amount. This methodology was considered and rejected by the Division in the adoption preamble to the Division’s former *Acute Care Inpatient Hospital Fee Guideline*, which states at 22 Texas Register 6276 (July 4, 1997) that:

“A discount from billed charges was another method of reimbursement which was considered. Again, this method was found unacceptable because it leaves the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs, would be administratively burdensome for the Commission and system participants, and would require additional Commission resources.”

Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital’s billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.

- The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in this dispute.
- The requestor did not support that payment of the requested amount would satisfy the requirements of Division rule at 28 TAC §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

Date

Signature

Medical Fee Dispute Resolution Manager

Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.